

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CHARLES R. MILLER, #1622294 §

VS. § CIVIL ACTION NO. 6:11cv151

DIRECTOR, TDCJ-CID §

ORDER ADOPTING REPORT AND RECOMMENDATION

The above-entitled and numbered petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 was heretofore referred to United States Magistrate Judge John D. Love. The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Petitioner has filed objections.

Having made a *de novo* review of the objections raised by Petitioner to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Petitioner's objections are without merit. Petitioner's objection addresses the Magistrate Judge's Report only to the extent he attempts to parse the words of 28 U.S.C. § 2244(d)(2). So doing, he argues that his first federal habeas petition, which he admits he voluntarily dismissed, should toll the statute of limitations for the period between the date of its filing and the date it was dismissed on his motion. *See* Objections at 1-3. However, he ignores the authorities the Magistrate Judge cited, which establish that under these circumstances, his voluntarily-dismissed first federal petition does not act to toll the limitations period. *See Duncan v. Walker*, 533 U.S. 167, 181-82, 121 S. Ct. 2120, 150 L. Ed. 2d 251 (2001); *Hayes v. Wilson*, 268 Fed. Appx. 344, 351 n.7 (5th Cir. 2008) (per curiam); *see also Grooms v. Johnson*, 208 F.3d 488, 489 (5th Cir. 1999) (per curiam). In fact, other than citing the text of 28

U.S.C. § 2244(d)(2), Petitioner presents no authorities at all in support of his objections. Therefore, Petitioner's objections are overruled.

It is accordingly

ORDERED that the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DENIED** and the case is **DISMISSED WITH PREJUDICE** as time-barred. A certificate of appealability is **DENIED**. It is further

ORDERED that any remaining motions by either party not previously ruled on are hereby **DENIED**.

So ORDERED and SIGNED this 5th day of December, 2011.



LEONARD DAVIS
UNITED STATES DISTRICT JUDGE